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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/581,506	05/23/2007	Paul Gruber	US03 0498 US2	7128

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PHILIPS INTELLECTUAL PROPERTY & STANDARDS
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EXAMINER

WALCZAK, DAVID J

ART UNIT	PAPER NUMBER
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3751

NOTIFICATION DATE	DELIVERY MODE
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10/14/2011

ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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Office Action Summary	Application No. 10/581,506	Applicant(s) GRUBER ET AL.	
	Examiner DAVID WALCZAK	Art Unit 3751	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 01 September 2011.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ An election was made by the applicant in response to a restriction requirement set forth during the interview on ____; the restriction requirement and election have been incorporated into this action.
- 4) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 5) ☒ Claim(s) 1-35 is/are pending in the application.
- 5a) Of the above claim(s) 19-22,28-30,34 and 35 is/are withdrawn from consideration.
- 6) ☒ Claim(s) 10-18 and 23-27 is/are allowed.
- 7) ☐ Claim(s) 1-9 and 31-33 is/are rejected.
- 8) ☐ Claim(s) _____ is/are objected to.
- 9) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 10) ☒ The specification is objected to by the Examiner.
- 11) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 12) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>6/1/06</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election

Applicant's election without traverse of Group I (claims 1-18, 23-27 and 31-33) in the reply filed on 7/5/11 is acknowledged.

Accordingly, claims 1-18, 23-27 and 31-33 will be examined herein and claims 19-22, 28-30, 34 and 35 are hereby withdrawn from further consideration.

Abstract

The abstract of the disclosure is objected to because the abstract should be submitted on a separate sheet with no other verbiage thereon. Correction is required. See MPEP § 608.01(b).

Claim Rejections - 35 USC § 112

Claims 1-9 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In regard to claim 1, it is unclear as to whether or not the oral composition is intended to be part of the claimed combination, i.e., line 3 of claim 1 indicates that the composition is not intended to be claimed, however, lines 9-11 seem to indicate that the composition is intended to be claimed. Should the Applicant intend to claim the composition, an antecedent basis for the composition should be defined. Should the

Art Unit: 3751

Applicant not intend to claim the composition, "adapted to be"/ "for" language should be used when referring thereto.

In regard to claims 5 and 8 it is unclear as to whether or not the reservoir is intended to be part of the claimed combination, i.e., lines 3 and 4 of claim 1 indicate that the reservoir is not intended to be claimed, however, the language of claims 5 and 8 seems to indicate that the reservoir is intended to be claimed. Should the Applicant intend to claim the reservoir, an antecedent basis should therefor be defined. Should the Applicant not intend to claim the reservoir, "adapted to be"/ "for" language should be used when referring thereto.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 31-33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wiegner et al. (U.S. Patent 6,406,207, hereinafter Wiegner).

Wiegner discloses an oral care device comprised of a housing 34 (see Figure 16) having dentifrice therein, a head 38, a compressible member 2 defining a fluid path and a pumping assembly 9, 4, 36 configured to compress the compressible member (see Figures 3 and 4 and the paragraph bridging columns 6 and 7) and thereby transfer dentifrice through the fluid path and toward an outlet. Although the Wiegner reference

Art Unit: 3751

does not disclose the specifically claimed yield point, shear slope, etc., it is the Examiner's position that it would have been obvious to one of ordinary skill in the art at the time the invention was made that the dentifrice can be designed to have any suitable yield point, shear slope, etc., without effecting the overall operation of the device. Especially since the Wiegner reference in no way limits this particular feature of the dentifrice.

Allowable Subject Matter

Claims 10-18 and 23-27 are allowed.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to DAVID WALCZAK whose telephone number is (571)272-4895. The examiner can normally be reached on Mon-Thurs, 6:30- 5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Huson Gregory can be reached on 571-272-4887. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3751

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

David J. Walczak
Primary Examiner
Art Unit 3751

DJW
10/10/11

/David J. Walczak/
Primary Examiner, Art Unit 3751